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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

AMERICAN ECONOMY INSURANCE
COMPANY,

Plaintiff and Respondent,

v.

VIVECA SANAI,

Defendant and Appellant.

B202352

(Los Angeles County
Super. Ct. No. SS014408)

APPEAL from a judgment and order of the Superior Court for the County of Los Angeles. Jacqueline A. Connor, Judge. Affirmed.

Cyrus Sanai for Defendant and Appellant.

Law Offices of Lydia Bouzaglou-Newcomb, Jane E. Carey; Law Offices of Zurawski and Jardine and Mary Talmachoff for Plaintiff and Respondent.

SUMMARY

An action seeking enforcement of a money judgment for sanctions is not a strategic lawsuit against public participation (SLAPP) suit, because the action is not based on any act of the judgment debtor in furtherance of his or her petition or free speech rights within the meaning of the anti-SLAPP statute, Code of Civil Procedure section 425.16.¹ The trial court's order so concluding, and consequently denying the judgment debtor's motion for attorney fees, is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

A judgment was entered in a federal court in the State of Washington awarding Sassan Sanai \$56,768 in sanctions against Cyrus, Fredric and Viveca Sanai. Sassan Sanai's insurer, American Economy Insurance Company (AEIC), filed an application for entry of judgment in California on a sister-state judgment under section 1710.15. Judgment was entered in favor of Sassan Sanai on August 8, 2006, even though federal court judgments cannot be enforced as sister state judgments under section 1710.15. (See § 1710.10.)

Viveca Sanai filed a motion "to vacate fraudulently obtained sister state judgment . . . and to strike complaint pursuant to Code Civ. Proc. [§] 425.16 . . . and for attorneys fees" AEIC opposed the motion to vacate the judgment, but did so on the ground that the entry of judgment in California was void and unenforceable in any event, so there was "really . . . nothing to vacate." AEIC described a "comedy of errors" under which its counsel had erroneously filed the application, and stated that when counsel obtained a copy of Viveca Sanai's motion to vacate the judgment (a month after it was filed), he immediately realized the motion to vacate was meritorious. Counsel for AEIC told counsel for Viveca Sanai he would seek to withdraw the application, and filed a request for dismissal (which was rejected by the court on procedural grounds). AEIC's counsel

¹ All further statutory references are to the Code of Civil Procedure.

asked Sanai's counsel to withdraw a motion for sanctions Sanai had also filed, but counsel refused.

On February 5, 2007, the trial court granted Viveca Sanai's motion to vacate the judgment, but denied her motion for sanctions, finding sanctions were not warranted under section 128.7. No mention was made of Sanai's anti-SLAPP motion.

Viveca Sanai then filed a motion for attorney fees under the anti-SLAPP statute, which provides that a defendant who prevails on a special motion to strike "shall be entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c).) She sought \$49,000 in fees and \$527 in costs.

The trial court denied Sanai's motion for attorney fees. The court observed, among other things, that AEIC's application for entry of a sister-state judgment was based upon the entry of a judgment against Viveca Sanai, and "[t]here is simply nothing to show that it was based upon free speech or petition activity by Viveca Sanai." The court also noted that 92 hours of attorney time for preparation of a 5-page motion "is not reasonable by any measure."

A judgment was entered on June 21, 2007, vacating the judgment obtained by AEIC and dismissing AEIC's complaint. On September 4, 2007, Viveca Sanai filed a notice of appeal from the judgment of dismissal.

DISCUSSION

Sanai challenges the trial court's refusal to award her attorney fees under the anti-SLAPP statute. Her appeal is without merit.

We briefly reprise the applicable legal principles. The anti-SLAPP statute was enacted as "a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional [First Amendment] rights." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056 (*Rusheen*).) A defendant may move to strike "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue" (§ 425.16, subd. (b)(1).) Acts in furtherance of petition or free speech rights are defined to include "any written or oral statement or writing made before a . . . judicial proceeding"

(§ 425.16, subd. (e)(1)), and “any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body” (§ 425.16, subd. (e)(2).) When an anti-SLAPP motion is filed, the trial court first decides whether the defendant has made a threshold showing that the challenged cause of action arises from protected activity. If that showing is made, the trial court then decides whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Rusheen, supra*, 37 Cal.4th at p. 1056.)

A defendant who prevails on an anti-SLAPP motion is entitled to recover his or her attorney fees and costs. (§ 425.16, subd. (c).) If a defendant has filed an anti-SLAPP motion and the action is subsequently dismissed, either by the trial court sua sponte or by the plaintiff, prior to a hearing on the motion, “the trial court must, upon defendant’s motion for a fee award, rule on the merits of the SLAPP motion” (*Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 218.) “[A]ny other rule would deprive the true SLAPP defendant of statutorily authorized fees, frustrating the purpose of the statute’s remedial provisions.” (*Ibid.*, citing *Liu v. Moore* (1999) 69 Cal.App.4th 745, 752-753.)

Sanai argues that she made the necessary threshold showing that AEIC’s action arose from her acts in furtherance of her petition rights. She points out that “filing a lawsuit in federal court is an activity in furtherance of the right to petition in the federal court,” and that “any claim put forward in a California court seeking to impose liability for filing a lawsuit” is subject to an anti-SLAPP motion. We do not disagree with the principle Sanai recites; *Rusheen* expressly tells us that “[a] cause of action ‘arising from’ defendant’s litigation activity may appropriately be the subject of a section 425.16 motion to strike.” (*Rusheen, supra*, 37 Cal.4th at p. 1056.) But Sanai omits the essential issue in the analysis: whether AEIC’s action was **based on** her act of filing a lawsuit in federal court. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76-77 (*Cotati*).) It clearly was not.

A cause of action does not arise from protected activity merely because it is filed after the defendant engaged in that activity. (*Cotati, supra*, 29 Cal.4th at pp. 71, 76-77,

[municipality's state court action for declaratory relief respecting the constitutionality of a mobilehome park rent stabilization ordinance, filed in response to a federal court declaratory relief action brought by park owners respecting the same ordinance, did not arise from the park owners federal suit, but rather from the underlying controversy over the ordinance].) In Sanai's case, the act she identifies as protected activity is her filing of a federal lawsuit. But AEIC's application for entry of a judgment was, on its face, "based upon a sister-state judgment . . .," not upon Sanai's act of filing a federal lawsuit or upon any action she took in that lawsuit. Of course, there would have been no judgment upon which AEIC could have based its application if Sanai had never filed a lawsuit. But that is not the standard for assessing whether a lawsuit arises from protected activity. The standard is whether "the defendant's act underlying the plaintiff's cause of action" was "*itself* . . . an act in furtherance of the right of petition or free speech." (*Cotati, supra*, 29 Cal.4th at p. 78.)

Here, AEIC's lawsuit did not seek to impose liability on Sanai based on any statements or writings she made before the federal court, or in connection with issues under consideration in the federal court (§ 425.16, subds. (e)(1)&(2)); indeed, it did not allege *any* act by Sanai. AEIC's complaint merely sought the entry of a judgment against Sanai, a judgment debtor, "based upon a sister-state judgment" Sanai's interpretation of the anti-SLAPP statute would in effect render all applications to enforce judgments susceptible to the claim they are suits seeking to chill or punish the exercise of free speech or petition rights. That would be an absurd result, and it finds no support in the statute, the cases, or common sense.

Because the trial court correctly concluded that there was "nothing to show that [AEIC's application] was based upon free speech or petition activity by Viveca Sanai," the denial of Sanai's motion for attorney fees was necessarily correct.

DISPOSITION

The order denying Viveca Sanai's motion for attorney fees is affirmed.
Respondent American Economy Insurance Company is to recover its costs on appeal.

O'NEILL, J.^{*}

We concur:

RUBIN, Acting P.J.

FLIER, J.

*

Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.